IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

Bail Appl..No. 6981 of 2007

(CRIME NO. 62/2007 MAVELIKKARA POLICE STATION)

PETITIONERS/ACCUSED

1. **RATHEESH, AGED 26 YEARS**
   S/O.MOHANAN, PUTHENPARAMBIL VEEDU
   PAZHAVEEDU WARD, MULLACKAL VILLAGE.

2. **DEEPU,S/O.BALACHANDRAN, AGED 21 YEARS**
   AYALAM, VEEDU, PAZHAVEEDU WARD, MULLACKAL VILLAGE.

3. **ALWIN JOSE,AGED 20 YEARS,S/O.THANKACHAN**
   KUTTITHURAYIL VEEDU, CHUNGAM WARD
   PAZHAVEEDU WARD, MULLACKAL VILLAGE.

4. **ARUN,AGED 22 YEARS,**
   S/O.KRISHNAPILLAI, ANNAVEEDU, CHUNGAM VEEDU
   PAZHAVEEDU WARD, MULLACKAL VILLAGE.

BY ADV. SRI.S.RAJEEV

RESPONDENTS: STATE

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKUAM (CRIME NO.62 OF 2007 OF MAVELIKKARA
POLICE STATION).

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No.6981 OF 2007

Dated this the 1st day of December, 2007

ORDER

The petitioners are accused 1 to 4 and they face allegations in a crime registered for offences punishable, inter alia, under Sec.307 read with Sec.149 of the IPC. The alleged incident took place on 14/2/07. The de facto complainant is an active functionary of the S.N.D.P. movement. There was some internecine disputes in the said organization and the petitioner allegedly belongs to one faction. There was bitter animosity between the rival groups. There was some incident few days prior to the incident in this case in which the house of an important functionary of the rival group was attacked.

2. On the day in question when the de facto complainant was proceeding on his two wheeler, a Tata Sumo vehicle came after him. The vehicle was stopped in front of the vehicle of

the de facto complainant. He was obstructed. The persons in the Tata Sumo vehicle got out of the vehicle and unleashed a brutal attack on the victim. He suffered serious and grievous injuries. He was immediately removed to the hospital by the local persons. The miscreants sped away in the Tata Sumo vehicle in which they came. Investigation was conducted initially by the local Circle Inspector of Police. Later, a Special Investigating Team was constituted. Though it was very seriously suspected that the internecine quarrel in the S.N.D.P. was the motive for the incident, no better clues were received till 22/10/07. On that day the Case Diary shows that discreet confidential information was received by the Investigating Officer about the vehicle used for the commission of the offence as also the names of the miscreants. The Investigating Officer went in search of the said vehicle and the 4 accused persons sitting inside the said vehicle and the vehicle were traced and seized/arrested on that date. The petitioners continue in custody from that day i.e., 22/10/07.

3. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. Very powerful persons are involved in the attack against the de facto complainant. Just to save them, police have now tried to pick up the four petitioners

without any valid reasons or tangible materials. Want of interest on the part of the Investigator is evident from the circumstance that the person who allegedly engaged the miscreants to attack the de facto complainant has not been traced so far. Another accused - the 5th accused, has already been granted anticipatory bail by the learned Sessions Judge. The continued detention of the petitioners is absolutely unnecessary. They may be enlarged on regular bail now subject to any appropriate terms and conditions, submits the learned counsel for the petitioners.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that sufficient materials have been collected against the petitioners. Their complicity has been ascertained satisfactorily. Investigation is not complete. The petitioners, even according to the Investigator, are only hired mercenaries who for consideration from the higher links had attacked the de facto complainant. Investigation is still at a very early stage. The person who had engaged the petitioners has not been identified so far. The police need further time to complete the investigation. At this early stage of the investigation, the petitioners may not be enlarged on bail.

5. Considering the nature and circumstances of the case, the learned Public Prosecutor was directed to place the Case Diary for my perusal after flagging the relevant pages. I have gone through the Case Diary. The confession statements of the accused persons who have been arrested have been perused by me. The subsequent statement of the de facto complainant has also been perused. No Test Identification parade is seen conducted. I am surprised to note that a co-accused who had acted with the connecting link between the petitioners and the higher links has been granted anticipatory bail by the Sessions Court. The investigation by the police has not, in these circumstances, gone higher up.

6. The alleged incident had taken on 14/2/07 and it is indeed unfortunate and disappointing that so far the real person responsible for the commission of the crime has not been traced. The investigation does not appear to be satisfactory. At least, it can be stated with certainty that failure to identify and bring to book the person who engaged the mercenaries is very disappointing.

7. Be that as it may, I do not find any reason to grant regular bail to the petitioners now. In coming to this conclusion I have taken note of the nature and gravity of the allegations

raised against the petitioners, the nature of the injuries suffered by the victim, the stage of the investigation as also the deleterious impact which the release of the petitioners on bail at this stage of the investigation is likely to leave behind in particular and the law and order situation in general. I am satisfied that the Investigators must be given further time to complete the investigation. That only one of the accused is shown to have criminal antecedents is certainly not a sufficient ground to direct release of the petitioners on bail now.

8. In the result, this bail application is dismissed. I may hasten to observe that the petitioners shall be at liberty to move this Court or the courts below for bail again at a later stage of the investigation not, at any rate, prior to 15/12/2007. The Investigator shall, in the meantime, make every endeavour to complete the investigation.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge